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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

DOMENICK LACURT BRYANT,

Defendant and Appellant.

C078629

(Super. Ct. No. 62093490A)

Defendant Domenick Lacurt Bryant pleaded no contest to possession of precursors for manufacture of methamphetamine with intent to sell, conspiracy to commit that offense, and commercial burglary. He also admitted a prior strike conviction and three prior prison terms. The trial court originally sentenced defendant to 11 years 8 months in prison, but subsequently resentenced him to 10 years 4 months in prison.

Defendant now contends he is entitled to an additional reduction of his sentence because one of his prior prison terms was for petty theft with a prior, a conviction that has since been reduced to a misdemeanor. We will affirm.

BACKGROUND

We limit our recitation of the background to facts relevant to the issue on appeal. Defendant pleaded no contest to possession of precursors for manufacture of

methamphetamine with intent to sell (Health & Saf. Code, § 11383.7, subd. (b)(1)), conspiracy to commit that offense (Pen. Code, § 182, subd. (a)(1)),¹ and commercial burglary (§ 459). He also admitted a prior strike conviction and three prior prison terms. In accordance with the stipulated sentence, the trial court sentenced defendant to 11 years 8 months in prison. (*People v. Bryant* (Oct. 24, 2012, C068752) [nonpub. opn.].) Defendant's prior prison terms were for a 1998 robbery, a 2002 first degree burglary, and a 2006 petty theft with a prior.

Defendant filed multiple petitions under section 1170.18, subdivision (a) seeking to have his convictions redesignated as misdemeanors. In January 2015, the parties stipulated his felony conviction for second degree burglary should be redesignated as a misdemeanor. The trial court amended the convictions and resentenced defendant, subtracting 16 months from his sentence, reducing his aggregate prison term to 10 years 4 months. The trial court found the other convictions did not qualify for redesignation. Defendant filed a notice of appeal on February 19, 2015. In April 2015, in case No. 06F01050, defendant's petition to redesignate the petty theft with a prior conviction as a misdemeanor was granted.

DISCUSSION

Defendant contends the reduction of his felony petty theft with a prior conviction to a misdemeanor entitles him to a further sentence reduction because that conviction was the basis for one of the prior prison term enhancements. The issue was not raised in the trial court. Defendant filed his notice of appeal before his petty theft conviction was reduced to a misdemeanor and the trial court was divested of jurisdiction. (*People v. Scarbrough* (2015) 240 Cal.App.4th 916, 920-930.) Because defendant asserts a question of law that may be resolved on undisputed facts, we will exercise our discretion to

¹ Undesignated statutory references are to the Penal Code.

resolve the appeal. (*People v. Tran* (2015) 61 Cal.4th 1160, 1166; *People v. Scott* (2012) 203 Cal.App.4th 1303, 1311; *People v. Rosas* (2010) 191 Cal.App.4th 107, 115.)

Proposition 47, the Safe Neighborhoods and Schools Act (the Act) requires “misdemeanors instead of felonies for nonserious, nonviolent crimes . . . unless the defendant has prior convictions for specified violent or serious crimes.” (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, p. 70.) Among the affected crimes is petty theft with a prior, which is now a misdemeanor except in circumstances not relevant here. (See §§ 666, 490.) The prior prison term enhancement applies if a defendant is convicted of a felony and serves a prison term for that conviction. (§ 667.5, subd. (b).) Defendant argues a prior prison term enhancement based on what is now a misdemeanor conviction does not survive the Act. This issue is currently before the California Supreme Court. (See, e.g., *People v. Valenzuela* (2016) 244 Cal.App.4th 692, review granted March 30, 2016, S232900; *People v. Carrea* (2016) 244 Cal.App.4th 966, review granted April 27, 2016, S233011.)

Section 1170.18 authorizes the reduction of felony convictions to misdemeanors even when the felony sentence was completed before passage of the Act. But that does not mean the conviction should be viewed as a misdemeanor retroactively. In *People v. Rivera* (2015) 233 Cal.App.4th 1085, the court held that section 1170.18, subdivision (k) should be applied prospectively. (*Rivera*, at p. 1100; see also *People v. Moomey* (2011) 194 Cal.App.4th 850, 857 [“Even if the perpetrator was subsequently convicted and given a misdemeanor sentence, the misdemeanant status would not be given retroactive effect”].) The court in *Rivera* concluded the felony status of an offense charged as a felony did not change after the Act was passed. (*Rivera*, at pp. 1094-1095, 1099-1101.) We see no reason to depart from *Rivera*. Although *Rivera* addressed subdivision (k) in a different context, its analysis of subdivision (k) is equally relevant here.

In *People v. Park* (2013) 56 Cal.4th 782, the Supreme Court held that a felony conviction properly reduced to a misdemeanor under section 17, subdivision (b) could

not *subsequently* be used to support an enhancement under section 667, subdivision (a). (*Park*, at p. 798.) But it would not be permissible to apply the reduction to eliminate an enhancement that was properly imposed before the passage of the Act. (*Park*, at p. 802; see also *People v. Feyrer* (2010) 48 Cal.4th 426, 439 [“If ultimately a misdemeanor sentence is imposed, the offense is a misdemeanor from that point on, but not retroactively.”].)

The drafters of Proposition 47 knew that section 17, which contained the “for all purposes” phrase found in subdivision (k) of section 1170.18, had been consistently interpreted by the Supreme Court so as not to give retroactive effect to an action reducing a wobbler from a felony to a misdemeanor. Defendant has not given us any reason to depart from a similar construction of the essentially identical operative text of subdivision (k).

DISPOSITION

The judgment (order) is affirmed.

/S/
MAURO, J.

We concur:

/S/
BUTZ, Acting P. J.

/S/
HOCH, J.